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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/712,178	11/13/2003	Gordon R. Huber	MORN-0034 (108347.83)	7893

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EXAMINER

TRAN LIEN, THUY

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 06/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/712,178

Applicant(s)

HUBER ET AL.

Examiner

Lien T. Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 April 2006.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 and 48-71 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-24 and 48-71 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

Claims 1-24, 48-71 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

In the amendment filed 4/11/06, applicant amends claims 1 and 48 to add the limitation that the food product having " a moisture content of at least 38.25". This limitation does not have support in the original disclosure. Table 1 pointed by applicant discloses that the ' extruder discharge moisture " is 38.25; there is no disclosure that the food product has this moisture. Also, at least 38.25% includes any moisture from 38.25 and up; this range is not disclosed any where in the specification. Example 1 only discloses pasta and not any other food products. There is no disclosure that the food product has moisture content in the range now claimed.

Claims 1,4-6, 8-13, 15-17, 20,24, 48, 51-53, 55-60, 62-64 and 71 are rejected under 35 U.S.C. 102(b) as being anticipated by Oh.

Regarding claims 1,4-6,8-13,15-17,20,24, 48,51-53,55-60,62-64,71, Oh teaches a non-aseptically packaged partially cooked extruded pasta made from up to 75% wheat flour ,a preservative and coated by an acid, at for example 60 grams acid per 200 grams pasta, that the pasta has a PH of 3.9-4.2 and Aw of 0.82-0.84 and is shelf stable at ambient temperature for six months (Column 1 , lines 20-51, Column 4, lines13-66, Example 1).

Claims 1,4-6, 8-14, 17, 20, 22-24, 48, 51-53, 55-58, 60, 61,64,67,69-71 are rejected under 35 U.S.C. 103(a) as being unpatentable over Debbouz et al.

Debbouz et al teach a non-aseptically packaged partially cooked, extruded pasta that may be made from rice flour ,a preservative, and lactic acid whereby the extrusion encapsulates the acid, that the pasta has a pH of 3.8-4.6 and Aw of 0.5-0.85 and is shelf stable at ambient temperature for 9 months (See Column 2, line15-65, Column 3, lines M-column 4, line 35).

Debbouz et al do not disclose the moisture content as claimed.

Debbouz et al disclose a dough having moisture between 29-36%. However, they do not restrict that the moisture content can only be in this range. It is well known that moisture content can vary with different types of food and within the same type of food. In absence of showing of criticality and unexpected result, it would have been obvious to one skilled in the art to vary the moisture content depending on the type of pasta made and the moistness wanted for such pasta. For example, if a very moist pasta is wanted, it would have been obvious to increase the water content to obtain higher moisture content.

Claims 2-3, 19, 49-50 and 66 are rejected under 35 U.S.C. 103(a) as being unpatentable over Debbouz et al in view of Kemp et al.

Debbouz et al do not disclose the acidulant as claimed.

Kemp et al. teach conventional chemical preservatives ,used to extend the shelf-life of foods ,introduce flavors and residues to the foods. Kemp et al. teach Group IIA acid complexes with acidified calcium sulfate as an alternative preservative composition

to conventional chemical preservative compositions used with food products, along with an additive such as an organic acid, alcohol, periodic acid or surfactant that has a synergistic effect in improving the preservative properties of the Group IIA complexes. Kemp et al. teach conventional preservatives change the flavor of the food and introduce residues, but the Group 11 A acid complex composition produces a safer and more desirable food product because it does not affect the flavor of food and does not produce any chemical residues (see column 11, line 55 to column 12, line 12, Column 10, lines 1-22, Column 5, lines to Column 6, line 10). Therefore, it would have been obvious to modify Debbouz et al. and include Group IIA acid complexes with an additive such as an organic acid, alcohol, periodic acid or surfactant, and acidified calcium sulfate in the food products of Debbouz et al since this composition offers a safer, non-flavor affecting, and more desirable means to provide a shelf-stable food product than conventional preservatives.

Claims 1,4-8,10,15-18,20,21,23,48,51-55,57,62-65,67,68,70 are rejected under 35 U.S.C. 103(a) as being unpatentable over Poulos et al.

Poulos et al. teach a non-aseptically packaged cooked cookie, made from flour and including alkalimetal sorbates and lactic acid with a pH of 3.5-6.5 and Aw of 0.6-0.8 and is shelf stable at ambient temperature for 6 months (See Column 4, lines 10-45, Column 5, lines 4-24, Column 6, line 55 to Column 7, line 14, Column 9, line 20 to column 10, line 12, Column 11, lines 17-35).

Poulos et al do not disclose the moisture content as claimed. While Poulos et al disclose on column 9 the different water content of the dough, it is well known the

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moisture content of the final product is determined by components other than the water. For instance, corn syrup, shortening and egg all affect the moisture content of the product. Thus, the moisture content of the product is not based on just the water content. Furthermore, It is well known that moisture content can vary with different types of food and within the same type of food. In absence of showing of criticality and unexpected result, it would have been obvious to one skilled in the art to vary the moisture content depending on the type of cookies made and the moistness and softness wanted for such cookie product. For example, if a very soft and moist cookie is wanted, it would have been obvious to increase the water content and other moisture source to obtain higher moisture content.

In the response filed 4/11/06, applicant argues Oh does not anticipate the claims because he does not disclose the moisture content now claimed. This argument is not persuasive because Oh discloses the moisture content is about 38% which means the moisture content is not right at 38% but can be a little higher and would include the 38.25% claimed. With respect to the pasteurization step, the claims do not exclude such step.

With respect to the other 102 rejections, applicant makes the same argument; however, the argument is moot because the rejections have been changed to 103 rejections as cited above. The West et al reference is no longer used in the rejection.

Applicant's arguments filed 4/11/06 have been fully considered but they are not persuasive.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Tuesday, Thursday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cano Milton can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

June 22, 2006


LIEN TRAN
PRIMARY EXAMINER
